

PART 1414—EX PARTE COMMUNICATIONS

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AUTHORITY: 22 U.S.C. 4107(c).

SOURCE: 46 FR 45859, Sept. 15, 1981, unless otherwise noted.

§ 1414.1 Purpose and scope.

This part contains the regulations of the Foreign Service Labor Relations Board relating to ex parte communications.

§ 1414.2 Unauthorized communications.

(a) No interested person outside this agency shall, in any Board proceeding subject to 5 U.S.C. 557(a), make or knowingly cause to be made any prohibited ex parte communication to any Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

(b) No Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding shall: (1) Request any prohibited ex parte communications; or (2) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

§ 1414.3 Definitions.

When used in this part:

(a) The term *person outside this agency*, to whom the prohibitions apply, shall include any individual outside the Board or the Authority, labor organization, agency, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding be-

fore the Board pursuant to 22 U.S.C. 4116.

(b) The term *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§ 1414.5 and 1414.6.

§ 1414.4 Duration of prohibition.

Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of § 1414.2 shall be applicable in any Board proceeding subject to 5 U.S.C. 557(a) beginning at the time of which the proceeding is noticed for hearing, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such knowledge.

§ 1414.5 Communications prohibited.

Except as provided in § 1414.6, ex parte communications prohibited by § 1414.2 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of part 1429 of this chapter; and

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

§ 1414.6 Communications not prohibited.

Ex parte communications prohibited by § 1414.2 shall not include:

(a) Oral or written communications which relate solely to matters which the Hearing Officer, Regional Director, Administrative Law Judge, General Counsel or member of the Board is authorized by law or Board rules to entertain or dispose of on an ex parte basis;

(b) Oral or written requests for information solely with respect to the status of a proceeding;

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding;

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to any agency proceeding subject to 5 U.S.C. 557(a); or

(f) Oral or written communications from the General Counsel to the Board when the General Counsel is acting on behalf of the Board under 22 U.S.C. 4109(d).

§ 1414.7 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized ex parte communication by any other person.

§ 1414.8 Reporting of prohibited communications; penalties.

Any Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding to whom a prohibited oral ex parte communication is attempted to be made, shall refuse to listen to the communication, inform the communicator of this rule, and advise such person that if the person has anything to say it should be said in writing with copies to all parties. Any such Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication, shall place or cause to be placed on the public record of the proceeding: (a) The communication, if it was written; (b) a memorandum stating the substance of the communication, if it was oral; (c) all written responses to the prohibited communication; and (d) memoranda stating the substance of all oral responses to the prohibited communication. The Executive Director of the Authority, if the proceeding is then pending before the Board, the Administrative Law Judge, if the proceeding is

then pending before any such judge, or the Regional Director, if the proceeding is then pending before a Hearing Officer or the Regional Director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within ten (10) days after the mailing of such copies, any party may file with the Executive Director of the Authority, Administrative Law Judge, or Regional Director serving the communication, as appropriate, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Board to impose an appropriate penalty under § 1414.9

§ 1414.9 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Board, Administrative Law Judge, or Regional Director, as appropriate, may issue to the party making the communication a notice to show cause, returnable before the Board, Administrative Law Judge, or Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Board, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Board may censure, suspend or revoke the privilege of practice before the